IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.847 OF 2001

IN

COMPANY PETITION NO.237 OF 2000

Virgin Records (India) Pvt.Ltd. ...Appellants

v/s

Milestone Music Distributors Pvt.Ltd. ...Respondents

Mr Rahul Chitnis i/b M/s DSK Legal for Appellants.

None for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 11TH SEPTEMBER 2007.

P.C. :-

1. By this appeal, the appellants challenge the order passed by the learned Single Judge of this Court in company petition No.237 of 2000 dated 18th July 2001 rejecting the petition filed by the petitioners under sections 443 and 434 of the Companies Act for winding up of the respondent - Company on the allegation that the respondent - Company is not in a position to pay its debts. The learned Single Judge has found that the claim made by the petitioners was disputed by the Company and in view of the dispute raised, the Court could not have entertained the company petition. The Court observed that if the petitioners want to establish their claim, they should file a civil suit. For claiming the amount, the petitioners were relying on a letter of alleged admission of the claim by the Company dated 4th May 2000. When the appeal was called for hearing, we asked the learned counsel appearing for petitioners whether the petitioners have filed civil suit for recovery of the claim. The learned counsel informed that no civil suit has been filed. As no civil suit has been filed for recovery of the amount, even assuming that the petitioners are right in contending that the claim was admitted by the respondents, the

alleged debt of the petitioners is barred by the law of limitation. In our opinion, even assuming that the learned Single Judge was not justified in rejecting the company petition, we will not be justified in admitting the petition today when clearly the claim in relation to which the company petition has been filed is barred by the law of limitation.

2. Admission of the company petition is in the discretion of the Court. Therefore, minimum that the Court should be satisfied about exercising its discretion in favour of the petitioners is that the claim of the petitioners is alive on the date on which the company petition is being admitted. Though on the date on which the company petition was filed it was not time barred, in our opinion, is not relevant because the company petition is not filed for recovery of the debt.

3. Taking overall view of the matter therefore, in our opinion, it will not be in the interest of justice to interfere with the order impugned in the appeal because of the conduct of the petitioners of not filing civil suit for recovery of their claim and allowing their claim to be time barred. Appeal is disposed off.

. Parties to act on the copy of this order duly

authenticated by the Associate / Private Secretary as

true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)